

AMENDED IN ASSEMBLY APRIL 1, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1169

Introduced by Assembly Member Daly

February 22, 2013

An act to amend Section 1785.3 of the Civil Code, relating to consumer credit reports.

LEGISLATIVE COUNSEL'S DIGEST

AB 1169, as amended, Daly. Consumer credit reports: escrow agents: real estate.

Existing law defines and regulates consumer credit reporting agencies and investigative consumer reporting agencies. Existing law defines a consumer credit report as a written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for certain purposes, as specified.

This bill would revise the definition of a consumer credit report to include a communication of information by a consumer credit reporting agency used for the purpose of serving as a factor in establishing the consumer's eligibility for a proprietary database and rating evaluation. This bill would define a proprietary database and rating evaluation as a report prepared for a fee and provided to a furnisher of credit, for the purpose of evaluating a consumer, ~~for use or retention in the furnisher's capacity as an escrow agent in the business of title insurance or in~~

~~business regulated under the provisions of the Real Estate Law~~ *consumer in the consumer's capacity as a person performing specified services within real estate transactions.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.3 of the Civil Code is amended to
2 read:
3 1785.3. The following terms as used in this title have the
4 meaning expressed in this section:
5 (a) "Adverse action" means a denial or revocation of credit, a
6 change in the terms of an existing credit arrangement which is
7 adverse to the interests of the consumer, or a refusal to grant credit
8 in substantially the amount or on substantially the terms requested.
9 "Adverse action" includes all of the following:
10 (1) Any denial of, increase in any charge for, or reduction in
11 the amount of, insurance for personal, family, or household
12 purposes made in connection with the underwriting of insurance.
13 (2) Any denial of employment or any other decision made for
14 employment purposes which adversely affects any current or
15 prospective employee.
16 (3) Any action taken, or determination made, with respect to a
17 consumer (A) for an application for an extension of credit, or an
18 application for the hiring of a dwelling unit, and (B) that is adverse
19 to the interests of the consumer.
20 "Adverse action" does not include (A) a refusal to extend
21 additional credit to a consumer under an existing credit
22 arrangement if (i) the applicant is delinquent or otherwise in default
23 under that credit arrangement or (ii) the additional credit would
24 exceed a credit limit previously established for the consumer or
25 (B) a refusal or failure to authorize an account transaction at a
26 point of sale.
27 (b) "Consumer" means a natural individual.
28 (c) "Consumer credit report" means any written, oral, or other
29 communication of any information by a consumer credit reporting
30 agency bearing on a consumer's credit worthiness, credit standing,
31 or credit capacity, which is used or is expected to be used, or
32 collected in whole or in part, for the purpose of serving as a factor

1 in establishing the consumer's eligibility for: (1) credit to be used
2 primarily for personal, family, or household purposes, or (2)
3 employment purposes, or (3) hiring of a dwelling unit, as defined
4 in subdivision (c) of Section 1940, (4) a proprietary database and
5 rating evaluation, or (5) other purposes authorized in Section
6 1785.11.

7 The term does not include (1) any report containing information
8 solely as to transactions or experiences between the consumer and
9 the person making the report, (2) any communication of that
10 information or information from a credit application by a consumer
11 that is internal within the organization that is the person making
12 the report or that is made to an entity owned by, or affiliated by
13 corporate control with, that person; provided that the consumer is
14 informed by means of a clear and conspicuous written disclosure
15 that information contained in the credit application may be
16 provided to these persons; however, where a credit application is
17 taken by telephone, disclosure shall initially be given orally at the
18 time the application is taken, and a clear and conspicuous written
19 disclosure shall be made to the consumer in the first written
20 communication to that consumer after the application is taken, (3)
21 any authorization or approval of a specific extension of credit
22 directly or indirectly by the issuer of a credit card or similar device,
23 (4) any report by a person conveying a decision whether to make
24 a specific extension of credit directly or indirectly to a consumer
25 in response to a request by a third party, if the third party advises
26 the consumer of the name and address of the person to whom the
27 request was made and the person makes the disclosures to the
28 consumer required under Section 1785.20, (5) any report containing
29 information solely on a consumer's character, general reputation,
30 personal characteristics, or mode of living which is obtained
31 through personal interviews with neighbors, friends, or associates
32 of the consumer reported on, or others with whom he is acquainted
33 or who may have knowledge concerning those items of
34 information, (6) any communication about a consumer in
35 connection with a credit transaction which is not initiated by the
36 consumer, between persons who are affiliated (as defined in Section
37 150 of the Corporations Code) by common ownership or common
38 corporate control (as defined by Section 160 of the Corporations
39 Code), if either of those persons has complied with paragraph (2)
40 of subdivision (b) of Section 1785.20.1 with respect to a

1 prequalifying report from which the information communicated
2 is taken and provided the consumer has consented to the provision
3 and use of the prequalifying report in writing, or (7) any consumer
4 credit report furnished for use in connection with a transaction
5 which consists of an extension of credit to be used solely for a
6 commercial purpose.

7 (d) “Consumer credit reporting agency” means any person who,
8 for monetary fees, dues, or on a cooperative nonprofit basis,
9 regularly engages in whole or in part in the business of assembling
10 or evaluating consumer credit information or other information on
11 consumers for the purpose of furnishing consumer credit reports
12 to third parties, but does not include any governmental agency
13 whose records are maintained primarily for traffic safety, law
14 enforcement, or licensing purposes.

15 (e) “Credit transaction that is not initiated by the consumer”
16 does not include the use of a consumer credit report by an assignee
17 for collection or by a person with which the consumer has an
18 account for purposes of (1) reviewing the account or (2) collecting
19 the account. For purposes of this subdivision, “reviewing the
20 account” includes activities related to account maintenance and
21 monitoring, credit line increases, and account upgrades and
22 enhancements.

23 (f) “Employment purposes,” when used in connection with a
24 consumer credit report, means a report used for the purpose of
25 evaluating a consumer for employment, promotion, reassignment,
26 or retention as an employee.

27 (g) “File,” when used in connection with information on any
28 consumer, means all of the information on that consumer recorded
29 and retained by a consumer credit reporting agency, regardless of
30 how the information is stored.

31 (h) “Firm offer of credit” means any offer of credit to a
32 consumer that will be honored if, based on information in a
33 consumer credit report on the consumer and other information
34 bearing on the creditworthiness of the consumer, the consumer is
35 determined to meet the criteria used to select the consumer for the
36 offer and the consumer is able to provide any real property
37 collateral specified in the offer. For purposes of this subdivision,
38 the phrase “other information bearing on the creditworthiness of
39 the consumer” means information that the person making the offer
40 is permitted to consider pursuant to any rule, regulation, or formal

1 written policy statement relating to the federal Fair Credit
2 Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.),
3 promulgated by the Federal Trade Commission or any federal bank
4 regulatory agency.

5 (i) “Item of information” means any of one or more informative
6 entries in a credit report which causes a creditor to deny credit to
7 an applicant or increase the cost of credit to an applicant or deny
8 an applicant a checking account with a bank or other financial
9 institution.

10 (j) “Person” means any individual, partnership, corporation,
11 trust, estate, cooperative, association, government or governmental
12 subdivision or agency, or other entity.

13 (k) “Prequalifying report” means a report containing the limited
14 information permitted under paragraph (2) of subdivision (b) of
15 Section 1785.11.

16 (l) The term “proprietary database and rating evaluation” means
17 a report prepared for a fee and provided to a furnisher of credit for
18 the purpose of evaluating a consumer, ~~for use or retention in the~~
19 ~~furnisher’s consumer in the consumer’s~~ capacity as an “escrow
20 agent,” as that term is defined in Section 17004 of the Financial
21 Code, ~~in the “business of title insurance,” as that term is used in~~
22 ~~Section 12340.3 of the Insurance Code, or in a business regulated~~
23 ~~under the Real Estate Law (Part 1 (commencing with Section~~
24 ~~10000) of Division 4 of the Business and Professions Code) or as~~
25 *a person performing the services authorized pursuant to*
26 *subdivision (c) of Section 12340.3 of the Insurance Code, or as a*
27 *real estate broker, or his or her employee, performing the services*
28 *described in subdivision (e) of Section 10131 of the Business and*
29 *Professions Code. Information stored or retained by a person, or*
30 *a person’s agent, used to prepare a proprietary database and*
31 *rating evaluation constitutes a file, as defined in subdivision (g).*

32 (m) “State or local child support enforcement agency” means
33 the Department of Child Support Services or local child support
34 agency acting pursuant to Division 17 (commencing with Section
35 17000) of the Family Code to establish, enforce or modify child
36 support obligations, and any state or local agency or official that
37 succeeds to these responsibilities under a successor statute.